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April 15, 1997

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MAY 22 1997

Federal Communications Commission
Office of Secretary

Ex Parte Filing

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

In re Matter of Federal-State
Joint Board on Universal Service,
CC Docket No. 96-45

Dear Mr. Caton:

Enclosed for filing in this docket are the original and one copy of a letter to Tim Peterson. I sent this letter to Mr. Peterson today on behalf of the RBOC Payphone Coalition. I would ask that you include the letter in the record of this proceeding in compliance with 47 C.F.R. § 1.1206(a)(2).

If you have any questions concerning this matter, please contact me at (202) 326-7902. Thank you for your consideration.

Yours sincerely,

Michael Kellogg
Michael K. Kellogg

cc: Tim Peterson

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Tim Peterson
Counsel to the Bureau Chief
Common Carrier Bureau
Federal Communications Commission Building
1919 M Street, N.W., Room 500
Washington, D.C. 20554-0001

In re Matter of Federal-State Joint Board on
Universal Service, CC Docket No. 96-45

Dear Tim:

On behalf of the RBOC Payphone Coalition, I am writing to address the question whether payphone service providers ("PSPs") should be required to contribute to, or be eligible to receive support from, the universal service fund. The Coalition does not believe there is any basis for including PSPs — LEC or non-LEC — in the universal service program. As the Commission has repeatedly concluded, PSPs qualify as "aggregators," a category the Act specifically exempts from the universal service program. In addition, PSPs generally are treated as "end users," who likewise are exempt from universal service obligations. I should stress, however, that I am talking here strictly about PSPs, insofar as they provide payphone services to the public. I am not including in this letter operator service providers.

Section 254(d) of the Telecommunications Act requires every "telecommunications carrier" to "contribute" toward universal service. But the term "telecommunications carrier" specifically excludes "aggregators of telecommunications service (as defined in section 226)." 47 U.S.C. § 3(44). An "aggregator," in turn, is defined as "any person that, in the ordinary course of its operations, makes telephones available to the public or to

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transient users of its premises, for interstate calls using a provider of operator services," 47 U.S.C. § 226(a)(2).

It seems clear to the RBOC Coalition that PSPs are, in general, "aggregators." They make telephones -- payphones -- "available to the public or to transient" members of the public using a "provider of operator services." For this reason, the American Public Communications Council ("APCC") argued in the interconnection docket that independent PSPs are "aggregators," not "telecommunications carriers."¹ The Commission agreed. Concluding that PSPs use retail telecommunications services just like other non-carrier subscribers, the Commission held that local exchange resale need not be made available to PSPs at wholesale rates for purposes of resale.² Instead, PSPs are treated like other business line customers, a conclusion echoed in the Commission's payphone orders,³ and in its prior decisions, which uniformly concluded that "payphones are 'aggregator' locations," so that the provider of the payphone (the PSP) is considered an aggregator even if it is not the title owner of the physical premises where the payphone is installed.⁴

¹Comments of the American Public Communications Council, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 at 3 (filed May 16, 1996).

²First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, ¶ 876 (rel. Aug. 8, 1996) ("Local Competition Order").

³Report and Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, ¶ 147 & n.508 (rel. Sept. 20, 1996) ("Report and Order") (noting that most PSPs are not telecommunications carriers).

⁴C.F. Communications Corp. v. Century Telephone, 10 FCC Rcd 9775, 9776 n.13 (1995). While the Commission has previously concluded that the definition of "aggregator" does not include inmate-only phones installed in correctional facilities, Report and Order, Policies and Rules Concerning Operator Services Providers, 6 FCC Rcd 2744, 2749 (1991), it has also proposed expanding that definition to include inmate phones. See Second Further Notice of Proposed Rulemaking, Billed Party Preference for InterLATA 0+ Calls, 11 FCC Rcd 7274, 7300-01 & n.122 (1996).

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The RBOC Coalition can see no reason why these decisions would apply any differently to RBOC PSPs than to independent PSPs. Both are aggregators by virtue of their ownership of a payphone. Indeed, treating them differently would create a competitive imbalance, which is contrary to the level playing field Congress sought to create in Section 276.

Moreover, both independent PSPs and RBOC PSPs will, under the Commission's new payphone orders, be treated as "end-users" rather than telecommunications carriers. In particular, independent PSPs and RBOC PSPs alike will be required to pay a SLC to cover their share of the payphone common line cost.⁵ Because PSPs are end users and not "telecommunications carriers" for purposes of the SLC, they similarly should be considered "end users" and not "telecommunications carriers" for universal service fund purposes as well.

In short, PSPs should neither contribute to nor receive support from the universal service fund.

I hope you find this information helpful and informative. If I can offer any further information or be of assistance, please feel free to call.

Sincerely yours,



Michael K. Kellogg

cc: Thomas Boasberg
James Casserly
James Coltharp
Dan Gonzalez

Regina Keeney
A. Richard Metzger
Mary Beth Richards
James Schlichting
Richard Welch

⁵Report and Order, ¶¶ 182-83 & n.617 (citing C.F. Communications Corp. v. Century Telephone, 10 FCC Rcd 9775 (1975)); see also C.F. Telecommunications Corp. v. Michigan Bell Telephone Co., 12 FCC Rcd 2134, 2142 (1997).